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Nos. 1 and 2

Supreme Court of the United States

OCTOBER TERM, 1963

MANUEL ARISTEGUIETA, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela, *Petitioner*,

v.

THE FIRST NATIONAL CITY BANK OF NEW YORK; FRENCH AMERICAN BANKING CORPORATION; THE ROYAL BANK OF CANADA; FORTUNATO HERRERA; PALINVERSIONES, C.A., a Venezuelan corporation; SILVIO GUTIERREZ; NAPOLEON DUPOUY; PEDRO A. GUTIERREZ ALFARO and LOLA T. DE GUTIERREZ ALFARO, *Respondents*.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE SECOND AND FIFTH CIRCUITS

REPLY MEMORANDUM FOR PETITIONER

HOWARD C. WESTWOOD
701 Union Trust Building
Washington 5, D. C.
Attorney for Petitioner

COVINGTON & BURLING
Of Counsel

September 1963

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The respondent banks agree that these cases are moot, but they urge that this Court depart from its "established practice" by simply dismissing the writs

rather than vacating the judgments below and ordering the proceedings dismissed as moot. They advance no valid reason for this departure.

The banks, emphasizing that in *United States* v. *Munsingwear, Inc.*, 340 U.S. 36, 39-40 (1950), the Court said its "established practice" of vacating a judgment and ordering the proceeding dismissed as moot obtains in a civil case from a court in the federal system, suggest (although they do not positively assert) that the proceedings below were not civil cases. Of course, they were civil cases separate from though ancillary to the extradition proceeding, as the banks themselves argued in the Fifth Circuit case in persuading the Court of Appeals that there was a final and appealable judgment. In any event, the rule of the *Munsingwear* case has been applied in statutory proceedings in the courts of appeals for review of administrative agency orders, which are not "suits of a civil nature" within the scope of the Federal Rules of Civil Procedure. See, *e.g.*, *SEC* v. *Philadelphia Co.*, 337 U.S. 901 (1949) (cited in footnote 2 of the *Munsingwear* opinion); *Eastern Air Lines, Inc.* v. *CAB*, 341 U.S. 901 (1951).

The main ground of the banks' opposition to petitioner's proposed disposition of the cases, however, is that petitioner has not shown that he will be prejudiced if the judgments below are allowed to stand. A showing of prejudice has never been thought necessary to move this Court to make what "has become the standard disposition in federal civil cases," 340 U.S. at 39 n.2. Indeed, it is quite clear from some of the cases cited by the Court in the *Munsingwear* opinion as illustrating the "established practice" in which there was a full exposition of the facts that the judgment was vacated and the proceeding ordered dismissed even though there was no possibility of another suit in which the judgment might have res judicata effect or other legal consequences. See *Berry* v. *Davis*, 242 U.S. 468 (1917); *Board of Pub. Util. Comm'rs* v. *Compania General de Tabacos*, 249 U.S. 425 (1919); *Atherton Mills* v. *Johnston*, 259 U.S. 13 (1922).

The respondent banks have been informed by counsel for the petitioner of the possibility that there may be further efforts by Venezuela to secure the bank records in question for use in the criminal proceeding now pending in Venezuela or otherwise. Unless the banks think they will be aided in their defense against any such efforts by leaving the judgments below in force, it is difficult to perceive any practical reason for their opposition to petitioner's proposed disposition. If they think the judgments would assist them, that is a cogent reason for wiping them off the books when review of them on their merits by this Court has been aborted.

Respectfully submitted,

HOWARD C. WESTWOOD
701 Union Trust Building
Washington 5, D. C.
Attorney for Petitioner

COVINGTON & BURLING
Of Counsel

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